



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2013-0492; FRL-9989-03-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Delaware;  
Interstate Transport Requirements for the 2010 1-Hour Sulfur Dioxide Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the remaining portions of a state implementation plan (SIP) revision submitted by the State of Delaware. This revision addresses the infrastructure requirement for interstate transport of pollution with respect to the 2010 1-hour sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0492. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For

Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schulingkamp, (215) 814-2021, or by e-mail at [schulingkamp.joseph@epa.gov](mailto:schulingkamp.joseph@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On May 29, 2013, Delaware submitted, through the Delaware Department of Natural Resources and Environmental Control (DNREC), a revision to its SIP to satisfy the infrastructure requirements of section 110(a)(2) of the CAA for the 2010 1-hour SO<sub>2</sub> NAAQS, including the interstate transport requirements of section 110(a)(2)(D)(i)(I). On January 22, 2014 (79 FR 3506), EPA approved Delaware’s infrastructure SIP submittal for the 2010 1-hour SO<sub>2</sub> NAAQS for all applicable elements of section 110(a)(2) with the exception of 110(a)(2)(D)(i)(I). On August 8, 2018 (83 FR 39035), EPA published a notice of proposed rulemaking (NPRM) approving the portion of Delaware’s SIP addressing the interstate transport requirements of section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO<sub>2</sub> NAAQS. For more information on SO<sub>2</sub> pollution, EPA’s infrastructure requirements, and interstate transport requirements, see Section I of the August 8, 2018 NPRM.

### **II. Summary of SIP Revision and EPA’s Analysis**

The portions of Delaware’s May 29, 2013 SIP submittal addressing interstate transport (for section 110(a)(2)(D)(i)(I)) discuss how Delaware does not significantly contribute with respect to the 2010 1-hour SO<sub>2</sub> NAAQS to nonattainment in, or interfere with maintenance in, any other state and discusses prevailing wind direction in the region. Delaware described in its submittal several existing SIP-approved measures and other federally enforceable source-specific

measures, pursuant to permitting requirements under the CAA, that apply to SO<sub>2</sub> sources within the State.

After evaluating the information on emissions, monitoring data, and meteorological data, EPA concluded that the level of SO<sub>2</sub> emissions in Delaware is primarily due to point sources, which have substantially and permanently reduced SO<sub>2</sub> emissions in the past five years. Additionally, the historical and recent data from SO<sub>2</sub> monitors in close proximity to Delaware's borders support the conclusion that emissions from point sources in Delaware have been substantially reduced and are not impacting neighboring states. Based on this information, EPA agreed with Delaware's general conclusion that the existing Delaware SIP is adequate to prevent sources in Delaware from significantly contributing to nonattainment or interfering with maintenance in another state with respect to the 2010 1-hour SO<sub>2</sub> NAAQS. A detailed summary of EPA's review and rationale for our approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO<sub>2</sub> NAAQS may be found in EPA's technical support document (TSD) (docket number: EPA-R03-OAR-2013-0492) and will not be restated here.

### **III. Response to Comments**

EPA received three sets of comments on the August 8, 2018 NPRM. Two of those sets lacked the required specificity to Delaware's SIP submissions and the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I); EPA provides no response to these comments because they fall outside the scope of our action. EPA did receive one relevant set of comments; those comments and EPA's responses are discussed in this section of this rulemaking action.

*Comment:* The commenter first stated that the SIP must consider SO<sub>2</sub> emissions from refineries and their interstate impacts, including emissions from the Delaware City Refinery. The

commenter also stated that consideration must include actual emissions as well as permitted emissions including emissions permitted during startup, shutdown, and malfunction.

*Response:* EPA agrees with the commenter that the Delaware SIP should consider SO<sub>2</sub> emissions from emission sources in Delaware. However, as stated in the NPRM and the TSD in greater detail, EPA has considered emissions from the Delaware City Refinery, as well as emissions from 33 other facilities in Delaware that produce over one ton per year (tpy) of SO<sub>2</sub>. See Table 2 of EPA's TSD. EPA considered actual emissions from the two most recent National Emissions Inventory (NEI) years (the 2011 NEI version 2 and 2014 NEI version 2) as well as the most recent year of data submitted to EPA's Emissions Inventory System (EIS) (the 2015 EIS). In comparing these data sets, EPA was able to evaluate the universe of sources in Delaware that are likely to be responsible for SO<sub>2</sub> emissions potentially contributing to interstate transport to downwind areas and states. In addition, by evaluating the actual emissions data reported to EPA, the Agency has considered emissions from any startup, shutdown, or malfunction events to the greatest extent possible; the process by which states submit data to the NEI system requires states to include emissions related to these events. Thus, EPA did consider actual emissions, including emissions that may have been from startup, shutdown, or malfunction events when evaluating Delaware's SIP revision to address interstate transport.

In addition, the commenter has not provided any specific information that any source, or its emissions, were not included in EPA's analysis or that any source listed in Table 2 of EPA's TSD has substantially higher emissions than what was indicated in Table 2 of EPA's TSD. EPA's assessment of Delaware's satisfaction of all applicable requirements under CAA section 110(a)(2)(D)(i)(I) for the 2010 SO<sub>2</sub> NAAQS was reasonably informed in part by evaluating the

downwind impacts of emissions from these sources. After reviewing this information on emissions, monitoring data, and meteorological data, EPA determined that Delaware does not significantly cause or contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states.

*Comment:* The commenter claimed it is arbitrary to assume that short-term emissions are equal to long-term emission limits. The commenter claimed it is arbitrary to assume that hourly emissions are never higher than the thirty-day or longer averaging time because there is no basis for this assumption. The commenter further claimed sources almost always exceed their long-term emission limits during shorter periods of time.

*Response:* EPA agrees with the commenter as a general matter that short-term emissions on an hourly basis could be higher than longer-term hourly emissions on a rolling average, and that a source just meeting its long-term limit could potentially have short-term emissions above the level of that limit. In designations and in review of attainment demonstrations, EPA gives appropriate recognition to this reality. See “Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions” (April 23, 2014), available at [https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance\\_nonattainment\\_sip.pdf](https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf). However, this potential for short term emissions to be higher on an hourly basis and not affect compliance with longer term limits does not affect EPA’s conclusion regarding the adequacy of Delaware’s SIP for interstate transport relative to the 1-hour SO<sub>2</sub> NAAQS, because the analysis in no way relies on an assumption that short-term emissions remain at or below long-term emission limits. In the NPRM and TSD, EPA did not rely on evaluations of short-term or long-term emission limits to support the conclusion that Delaware does not significantly cause or contribute to nonattainment or interfere

with maintenance of the NAAQS in downwind states, nor did the Agency make any statements or conclusions regarding short-term or long-term emission limits, or the relationship between such limits and Delaware not significantly contributing to nonattainment or maintenance issues in other states.<sup>1</sup> Similarly, EPA's proposed approval of the interstate transport SIP did not rely on any evaluation of hourly emissions or comparisons with thirty-day or longer averaging times, nor did EPA make any assumptions regarding these topics. EPA assessed annual emissions data in order to determine the scope of review necessary as a way to narrow Delaware's universe of sources likely to be responsible for SO<sub>2</sub> emissions potentially contributing to interstate transport. After determining that 62% of Delaware's emissions are from point sources, EPA next focused on individual facilities which emitted above one tpy. EPA chose one tpy as the emissions threshold for consideration for interstate transport because Delaware's universe of point sources was manageable enough to evaluate at this low threshold; this does not preclude EPA from choosing a different threshold in the future or for evaluating interstate transport in a different state. With regards to the commenter's claims about sources "almost always" exceeding their long-term emission limits during shorter periods of time, the commenter did not provide any evidence about any of the 33 named sources evaluated by EPA in the TSD to support such a claim.

*Comment:* The commenter asserted that, for sources with no emission limits such as flares, EPA's analysis must be based on a mass balance calculation of maximum emissions and be

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<sup>1</sup> EPA notes that short-term limits were utilized in modeling performed during the designations process for the Anne Arundel, Maryland nonattainment area. However, EPA did not rely on that modeling for any purposes related to evaluating significant contribution to nonattainment or interference with maintenance of the 2010 SO<sub>2</sub> NAAQS. As further described in the July 7, 2018 TSD and NPRM for this action, based on wind direction, distance, and emissions from Delaware, EPA believes it is unlikely for Delaware's emissions to significantly contribute or interfere with maintenance of the 2010 SO<sub>2</sub> NAAQS.

based on the flares not operating unless there is a SIP provision with adequate monitoring which requires the flares to ignite every time the stack is in service.

*Response:* In the NPRM and TSD, EPA did not make any claims or conclusions regarding emissions from flares, calculating maximum emissions, or any other topic regarding sources with no emission limits. EPA's evaluation regarding Delaware's emissions and whether the SIP adequately addressed obligations in CAA section 110(a)(2)(D)(i)(I) was based on facility-wide actual emissions reported to EPA in both the NEI system and EIS. As such, the commenter's assertion that EPA's analysis must be based on a mass balance calculation of maximum emissions and be based on the flare not operating is not pertinent to EPA's analysis of Delaware's sources or the adequacy of Delaware's SIP in meeting obligations in 110(a)(2)(D)(i)(I). Thus, no further response is provided.

*Comment:* Lastly, the commenter stated that it is arbitrary for EPA to rely on prevailing winds as the 2010 SO<sub>2</sub> NAAQS is a 1-hour standard. The commenter states that the meteorology in roughly 99.95% of hours in any given year would be irrelevant because the form of the NAAQS is the 4th high daily maximum one-hour value. The commenter further stated that, unless EPA has evidence in the record that the winds traveled in the same direction as the prevailing winds 99.95% of the year, the use of prevailing winds is irrelevant to the question of whether sources in Delaware significantly contribute to, or interfere with the maintenance of, the NAAQS in New Jersey.

*Response:* EPA disagrees with the commenter's assertion that it is arbitrary for EPA to rely on prevailing winds as part of the weight of evidence assessment of whether Delaware's SIP satisfies the interstate transport requirements for the 2010 SO<sub>2</sub> NAAQS. EPA believes the

central tendency of the distribution of wind directions being away from a receptor location as indicated by a wind rose, and the frequency of winds being in the direction of a receptor location, can be useful factors in determining the likelihood of SO<sub>2</sub> emissions transporting beyond Delaware's borders. Furthermore, EPA's use of wind rose information is only one of many factors considered in the EPA's weight of evidence analysis and is not the sole factor in determining whether Delaware significantly contributes to nonattainment or interferes with maintenance of the NAAQS in downwind states. In addition to wind rose information, EPA evaluated the distances between sources in Delaware and the borders with other states, currently available ambient monitoring data, permanent and enforceable reductions from facilities in Delaware, and SIP-approved programs that limit any future increases in emissions from sources in Delaware (such as nonattainment new source review and prevention of significant deterioration permitting programs) and implementation of nationally applicable Federal rules (such as 40 CFR part 63, subparts DDDDD and JJJJJ, collectively "EPA's ICI Boilers and Heaters NESHAP Rules").<sup>2</sup>

#### **IV. Final Action**

EPA is approving the remaining portions of the May 29, 2013 SIP revision that address interstate transport for the 2010 1-hour SO<sub>2</sub> NAAQS as these portions meet the requirements in CAA section 110 and specifically in 110(a)(2)(D)(i)(I). EPA is approving these portions of the May 29, 2013 SIP submission as a revision to the Delaware SIP.

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<sup>2</sup> Because EPA's consideration of wind rose information is only one of many factors used in evaluating Delaware's transport SIP for the 1-hour SO<sub>2</sub> NAAQS, our evaluation of wind rose information has no implications for how wind rose information may be used or considered in any other EPA action. The technical utility or importance of wind rose information in another action will depend on the specific technical circumstances and related CAA requirements.



## **V. Statutory and Executive Order Reviews**

### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is

published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, addressing Delaware’s interstate transport requirements for the 2010 1-hour SO<sub>2</sub> NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 28, 2018.

Cecil Rodrigues,  
Acting Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

### **Subpart I-- Delaware**

2. In § 52.420, the table in paragraph (e) is amended by revising the entry for “Section 110(a)(2) Infrastructure Requirements for the 2010 SO<sub>2</sub> NAAQS” and adding a second entry directly beneath that entry for “Section 110(a)(2) Infrastructure Requirements for the 2010 SO<sub>2</sub> NAAQS” to read as follows:

#### **§ 52.420 Identification of plan.**

\* \* \* \*

(e) \* \* \*

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
* * * *	* *			
Section 110(a)(2) Infrastructure Requirements for the 2010 SO <sub>2</sub> NAAQS	Statewide	5/29/2013	1/22/2014, 79 FR 3506	Docket #: 2013-0492. This action addresses the following CAA elements of section 110(a)(2): A, B, C, D(i)(II), D(ii), E, F, G, H, J, K, L, and M.
Section 110(a)(2) Infrastructure Requirements for the 2010 SO <sub>2</sub> NAAQS	Statewide	5/29/2013	<b><u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u></b>	Docket #: 2013-0492. This action addresses CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2)
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